

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

September 20, 2006

Charles W. Palmateer
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: State v. Palmateer, Def. ID# 0310025709

DATE SUBMITTED: August 28, 2006

Dear Mr. Palmateer:

Pending before the Court is the motion of defendant Charles W. Palmateer ("defendant") for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). This is my decision denying the motion.

FACTS AND PROCEDURAL POSTURE

On October 31, 2003, defendant entered the Delaware State Police Troop 4 building and confessed to a State Trooper that he had killed his sixty-nine-year-old father on or about October 30, 2003. Defendant was charged with murder in the first degree; possession of a firearm during the commission of a felony; possession of a deadly weapon (firearm) by a person prohibited; and theft under \$1000 where the victim was 62 years of age or older. He also was charged with robbery in the second degree in connection with a separate incident which occurred on or about

October 31, 2003.

In February, 2004, defendant was indicted on charges of murder in the first degree; possession of a firearm during the commission of a felony (“PFDCF”); two counts of theft felony; robbery in the first degree; possession of a destructive weapon; and possession of a deadly weapon by a person prohibited. The State of Delaware (“the State”) pursued the murder in the first degree count as a capital offense.

Defendant’s main trial counsel was James D. Nutter, Esquire (“trial counsel”). E. Stephen Callaway, Esquire assisted Mr. Nutter.

Dr. Mandell Much examined defendant in connection with a defense of guilty but mentally ill. Dr. Much diagnosed defendant with schizoaffective disorder and concluded that this mental illness “‘substantially impair[ed] his thinking, his feeling and his behavior’ such that ‘at the time of the shooting [of his father], he lacked sufficient willpower to refrain from doing it.’” State’s Motion to Compel Mental Examination of Defendant, Docket Entry No. 35. The State then had Dr. Stephen Mechanick examine defendant. Dr. Mechanick diagnosed defendant with anti-social personality disorder.

In May, 2005, defense counsel notified the State that Dr. Duane D. Schubert, a psychiatrist, had been treating defendant for schizoaffective disorder with psychotropic medications while defendant was incarcerated. Defendant’s Supplemental Expert Witness Disclosure, Docket Entry No. 69.

On May 26, 2005,¹ defendant entered into guilty pleas to charges of murder in the first degree, PFDCF, and robbery in the first degree. In exchange for entering the pleas, the State

¹Defendant incorrectly states that he pled guilty on June 4, 2005.

agreed to nolle prosequere the remaining charges and, most importantly, to forego seeking defendant's death as punishment for murdering his father.

In the Truth-in-Sentencing ("TIS") Guilty Plea Form, which defendant told the Court his counsel read to him and to which he supplied the answers, defendant denied he was "under the influence of alcohol or drugs at this time." In that same form, he affirmatively answered the questions of whether he was satisfied with his lawyer's representation of him and whether his lawyer has fully advised him of his rights and of his guilty plea. He answered "No" to the questions of whether he had been promised anything not stated in his written plea agreement and whether his attorney, the State or anyone had threatened or forced him to enter this plea. He answered "Yes" to the questions of whether he was freely and voluntarily entering the plea and he understood all of the information on the TIS form.

During the plea colloquy, it was noted that the recommended sentence was life in prison on the murder charge, twenty years on the PFDCF charge, and, because defendant previously had been declared an habitual offender, life in prison on the robbery charge.

Defendant's trial counsel explained the following. The best plea the defense ever hoped for was life in prison due to defendant's habitual offender status. Trial counsel stated:

This is an almost 18-month-old case, and from the beginning, because of Mr. Palmateer's habitual offender status, we felt and advised Mr. Palmateer that life in prison was the best we were going to do under any set of circumstances, and this is the plea that we've been working for since that time.

Transcript of May 26, 2005, Proceedings at 4 ("Trans. at ____")² Defendant affirmed that the life sentence was the defense goal:

²I am providing a copy of this transcript to defendant by way of enclosure.

THE COURT: And this conclusion with the sentence of life, that is something that has been a goal all along?

THE DEFENDANT: Yeah.

Trans. at 21-22.

Trial counsel addressed defendant's mental health history. He explained that he had seen a great improvement in defendant's mental health since 2004 and he had "no doubts as to his competence." Trans. at 6. Trial counsel further stated:

The prison records that we have support the idea that he's been stabilized on a maintenance dosage of an anti-psychotic, which is Risperdal. In the beginning was a whole litany of medicines that he was taking until they got him stabilized on what seems to be working, and it's Risperdal. He's seen now at Prison Mental Health on a monthly basis. All of the progress reports that we get are that the patient is stabilized and doing well, less symptoms of depression than what I noticed in the beginning. ...

So with respect to his mental history, one, I believe that he's competent; two, I believe that he understands the plea; and three, even though he's on a maintenance dosage of medication, I don't believe that impairs him in any way from making this decision today to enter the plea as being entered here.

Id.

Further pertinent to defendant's mental condition is the following colloquy:

THE COURT: I understand from what Mr. Nutter has had to share with me, that you were once in a mental hospital; is that accurate?

THE DEFENDANT: Yeah.

THE COURT: As we speak today, do you feel that you are in a position to make a good and rational choice about your future as we speak?

THE DEFENDANT: Yeah.

THE COURT: Are you under the influence of alcohol or drugs at this time?

THE DEFENDANT: No.

Trans. at 10-11.

The next pertinent colloquy is set forth below:

THE COURT: As your lawyer has shared with you, you were evaluated by Doctor Much, and Doctor Much felt that perhaps you had a mental illness, that you might be able to have a verdict of guilty, but mentally ill. Do you understand you would be giving that up by pleading guilty here this afternoon?

THE DEFENDANT: Yeah.

Trans. 14-15.

Defendant verbally told the Court he was satisfied with both Mr. Nutter and Mr. Callaway's representation of him and stated he did not have any complaints about the representation. He further confirmed that Mr. Nutter had gone over the evidence with him and had spent "a lot of time with [him]." Trans. at 18. To clarify, defendant confirmed the following information. His attorney went over the information in the forms with him. Defendant provided the answers to the questions in the TIS form. The information in all the forms was true. He understood the trial rights he was giving up by entering into the plea. No one was forcing him to enter the plea. He understood the penalties he was facing.

Defendant pled guilty to the charges as outlined above. The Court accepted the pleas and stated:

The defendant is making a voluntary choice in these matters. He is making a knowing and intelligent waiver of his rights as well. I have had an opportunity to observe Mr. Palmateer closely. In my mind, he is making this clear. He has made a rational choice about his future, and he is making a decision which is certainly, from his viewpoint, an appropriate decision, given the fact of the likelihood of conviction and the likelihood of facing capital punishment, should his case had proceeded to trial before a jury.

Trans. at 22.

The Court then sentenced defendant as follows. As to the murder in the first degree conviction, he was sentenced to Level 5 for the balance of his natural life. As to the robbery in the first degree, on which he was declared an habitual offender, he was sentenced to life imprisonment at Level 5. As to the PFDCF conviction, he was sentenced to twenty years at Level 5. Each sentence was mandatory. As noted earlier, receiving a life sentence, rather than the death penalty, was defendant's goal. Trans. at 21-22.

Defendant did not appeal therefrom.

On August 2, 2006, defendant filed the pending Rule 61 motion alleging several grounds for relief. I discuss these grounds below.

DISCUSSION

The first step this Court takes is to determine if the claims defendant advances in this Rule 61 motion may proceed or if they are procedurally barred. In the version of Rule 61(i) which applies to defendant's case, it is provided as follows:

Bars to relief. (1) Time limitation. A motion for postconviction relief may not be filed more than three years after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than three years after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

(2) Repetitive motion. Any ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim is warranted in the interest of justice.

(3) Procedural default. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows

(A) Cause for relief from the procedural default and

(B) Prejudice from violation of the movant's rights.

(4) Former adjudication. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is

thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.

(5) Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

Defendant's motion is timely filed. Super. Ct. Crim. R. 61(i)(1).

Defendant argues that his plea was not knowing, intelligently, or voluntarily entered because he was on psychiatric medication which prevented him from comprehending how to plead. He also alleges he did not understand the nature of the charges nor much else due to his incompetency. He states his actual mental condition was contrary to the TIS statement that he was not under the influence of drugs. He maintains that had he been competent, he would have gone to trial.

This claim is procedurally barred because it was not asserted in the proceedings leading to the judgment of conviction. Defendant seeks to avoid this procedural bar of Rule 61 by asserting the "miscarriage of justice" exception in Superior Court Criminal Rule 61(i)(5). "Whether a guilty plea has been entered knowingly and voluntarily is a concern of constitutional implication that justifies" applying the miscarriage of justice exception to the procedural bar. State v. Durham, Del. Super., Cr.A. No. IN81-11-0002-R1, Cooch, J. (Dec. 21, 1992) at 6, citing Webster v. State, 604 A.2d 1364, 1366 (Del. 1992).

Contrary to defendant's statements in his Rule 61 motion, this Court, as well as trial counsel, were aware that defendant was taking psychotropic medication and they addressed the matter on the record. The Court confirmed with defendant that he understood the charges against him, had discussed the plea with his attorney, understood what his sentence would be, and

wished to enter the guilty plea. This Judge confirmed that defendant comprehended the rights he was relinquishing and the consequences of the guilty plea. Finally, the Court confirmed that obtaining this plea was defendant's goal from the start of the proceedings. Defendant entered the plea knowingly and voluntarily. This claim fails. Lindsey v. State, Del. Supr., No. 531, 2002, Steele, J. (Jan. 7, 2003); Hunt v. State, 527 A.2d 1241 (Del. 1987); State v. Jones, Del. Super., Def. ID# 9911013398, Graves, J. (Jan. 3, 2006).

In light of my above conclusions that defendant was competent and that the plea was knowingly and voluntarily entered, all ineffective assistance of counsel arguments based on his incompetency allegation fail. See Porterfield v. State, 798 A.2d 1042 (Del. 2002).

Defendant also asserts several other grounds of ineffective assistance of counsel.³ Since this is the first time defendant could advance an ineffective assistance of counsel claim, there is no procedural bar.

As the Supreme Court recently explained in Dorsey v. State, Del. Supr., No. 406, 2005, Jacobs, J. (April 4, 2006) at 3-4:

To prevail on a claim of ineffective assistance of counsel in connection with a guilty plea, a defendant must show that, but for his counsel's unprofessional errors, he would not have pleaded guilty, but would have insisted on proceeding to trial. [Citation and footnote omitted.] There is no evidence in the record that any error on the part of Dorsey's counsel caused him to plead guilty. To the contrary, the record reflects that Dorsey's plea agreement provided him a significant benefit. Moreover, given the circumstances of his arrest, the evidence against him, and his criminal history, there is no reason to believe that Dorsey would have received a lesser sentence had he not pleaded guilty and had proceeded to trial.

³Defendant submits an affidavit in which he makes various statements. To the extent these statements can be construed to be allegations which are not advanced in his motion, they are ignored. Defendant is responsible for framing his arguments; the Court cannot frame them for him.

Defendant argues trial counsel was not effective because he failed to investigate the effects of the drugs defendant was taking and determine if they might impact on defendant's ability to enter the plea voluntarily. He maintains trial counsel was ineffective for not investigating whether defendant was mentally incompetent, failing to investigate his mental condition, not going over the psychiatric report with defendant, and not informing the Court defendant was on medications. The transcript shows that each of these allegations is false. Thus, defendant has not established trial counsel was ineffective. This claim fails.

Defendant also alleges that trial counsel "never discussed any other options or possible defenses that Movant had available except pleading guilty to Murder 1st Degree." The record establishes that allegation is false, also. The record clarifies that the defense pursued a guilty but mentally ill defense and that defendant knew he was foregoing that defense when he accepted this plea bargain. Since the allegations upon which defendant bases this claim are false, this claim fails.

Defendant additionally asserts trial counsel never investigated his competence and had he done so, he would have determined he was not competent to go to trial. Although he does not state it, defendant's implication is that he would not have had to go to trial if he was incompetent. The fact the Court determined him competent at the time he entered the plea renders this contention meritless. Accordingly, this claim fails.

Defendant argues he did not appeal because his attorney failed to inform him of his right to appeal. The only ground of appeal he addresses is that he was not competent to enter the plea because he was taking psychotropic medications. Since defendant was competent, there would have been no basis for appeal and he cannot show that the outcome would have been different.

Thus, he cannot meet the prejudice prong which Strickland v. Washington, 466 U.S. 668, 694 (1984) requires.

Finally, defendant argues that before trial, trial counsel never questioned him about his habitual offender status nor did he discuss with defendant possible ways of attacking that habitual offender designation which was rendered on February 21, 1997. He maintains trial counsel was ineffective for not investigating whether any of the underlying convictions on which the habitual offender designation rested could be attacked. He alleges he would not have pled guilty but would have gone to trial.

The record clarifies that trial counsel did discuss defendant's habitual offender status with him. That claim fails. As to the balance of his claims pertaining to habitual offender status, defendant fails to provide any evidence that any of his underlying convictions could have been attacked. Absent such a showing, this claim fails.

CONCLUSION

For the reasons stated above, defendant's motion for postconviction relief is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
Melanie C. Withers, DAG
James D. Nutter, Esquire
E. Stephen Callaway, Esquire